

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZOHO CORPORATION,

Plaintiff,

v.

SENTIUS INTERNATIONAL, LLC

Defendant.

CASE NO. 4:19-cv-00001-YGR

**ORDER GRANTING
STIPULATED PROTECTIVE
ORDER PURSUANT TO PATENT
LOCAL RULE 2-2
AS MODIFIED BY THE COURT**

SENTIUS INTERNATIONAL, LLC,

Counterclaimant,

v.

ZOHO CORPORATION and ZOHO
CORPORATION PVT., LTD.

Counter-Defendants.

Pursuant to Local Patent Rule 2-2, it is hereby stipulated, by and between Defendant and Counterclaimant Sentius International, LLC (hereinafter “Sentius”) and Plaintiffs and Counter-Defendants Zoho Corporation and Zoho Corporation Pvt., Ltd., (collectively hereinafter “Zoho”) through their respective counsel of record and pursuant to the approval of this Court, to enter the following Protective Order to provide the parties, and potential non-parties, protection for proprietary information and sensitive material produced.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this litigation may be warranted. This Order
 2 does not confer blanket protections on all disclosures or responses to discovery and the protection it
 3 affords from public disclosure and use extends only to the limited information or items that are
 4 entitled to confidential treatment under the applicable legal principles. As set forth in Section 14.4
 5 below, this Protective Order does not entitle the Parties to file confidential information under seal;
 6 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
 7 applied when a party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
 10 or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
 12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 13 Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support
 15 staff).

16 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
 17 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information in this matter.

18 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 19 produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY
 20 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE
 21 CODE."

22 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
 23 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 24 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 25 discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
 27 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
 28 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,

1 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
2 competitor.

3 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
4 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-
5 Party would create a substantial risk of serious harm that could not be avoided by less restrictive
6 means.

7 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
8 sensitive "Confidential Information or Items" representing computer code and associated comments
9 and revision histories, formulas, engineering specifications, or schematics that define or otherwise
10 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to
11 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided
12 by less restrictive means.

13 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel
14 does not include Outside Counsel of Record or any other outside counsel.

15 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action
18 but are retained to represent or advise a party to this action and have appeared in this action on behalf
19 of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.13 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
23 in this action.

24 2.15 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.
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28

1 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
3 CONFIDENTIAL – SOURCE CODE” in this matter.

4 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as
8 defined above), but also: (1) any information copied or extracted from Protected Material; (2) all
9 copies, excerpts, summaries, or compilations of Protected Material; (3) any testimony, conversations,
10 or presentations by Parties or their Counsel that might reveal Protected Material; and (4) documents,
11 electronically stored information and things, and other information produced, disclosed or generated
12 based on confidential information.

13 However, the protections conferred by this Stipulation and Order do not cover the following
14 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
15 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
16 publication not involving a violation of this Order, including becoming part of the public record
17 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
18 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
19 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
20 Protected Material at trial shall be governed by a separate agreement or order.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations imposed by this
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
24 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
25 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
26 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
27 limits for filing any motions or applications for extension of time pursuant to applicable law.
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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 3 Non-Party that designates information or items for protection under this Order must take care to limit
 4 any such designation to specific material that qualifies under the appropriate standards. To the extent
 5 it is practical to do so, the Designating Party must designate for protection only those parts of
 6 material, documents, items, or oral or written communications that qualify – so that other portions of
 7 the material, documents, items, or communications for which protection is not warranted are not
 8 swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 11 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 12 other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
 14 protection do not qualify for protection at all or do not qualify for the level of protection initially
 15 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
 16 mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 18 e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
 19 Discovery Material that qualifies for protection under this Order must be clearly so designated before
 20 the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
 23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 24 affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 25 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
 26 protected material. If only a portion or portions of the material on a page qualifies for protection, the
 27 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 28 markings in the margins) and must specify, for each portion, the level of protection being asserted.

1 A Party or Non-Party that makes original documents or materials available for inspection need
 2 not designate them for protection until after the inspecting Party has indicated which material it
 3 would like copied and produced. During the inspection and before the designation, all of the material
 4 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 5 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
 6 Producing Party must determine which documents, or portions thereof, qualify for protection under
 7 this Order. Then, before producing the specified documents, the Producing Party must affix the
 8 appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected
 10 Material. If only a portion or portions of the material on a page qualifies for protection, the
 11 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 12 markings in the margins) and must specify, for each portion, the level of protection being asserted.

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 14 Designating Party identify on the record, before the close of the deposition, hearing, or other
 15 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 16 impractical to identify separately each portion of testimony that is entitled to protection and it appears
 17 that substantial portions of the testimony may qualify for protection, the Designating Party may
 18 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have
 19 up to 21 days to identify the specific portions of the testimony as to which protection is sought and to
 20 specify the level of protection being asserted. Only those portions of the testimony that are
 21 appropriately designated for protection within the 21 days shall be covered by the provisions of this
 22 Stipulated Protective Order.

23 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards
 24 if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
 25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
 27 other proceeding to include Protected Material so that the other parties can ensure that only
 28 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit

A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
4 by providing written notice of each designation it is challenging and describing the basis for each
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
6 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
7 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
8 process by conferring directly (in voice to voice dialogue; other forms of communication are not
9 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
10 explain the basis for its belief that the confidentiality designation was not proper and must give the
11 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
12 and, if no change in designation is offered, to explain the basis for the chosen designation. A
13 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
14 this meet and confer process first or establishes that the Designating Party is unwilling to participate
15 in the meet and confer process in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding
18 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining
19 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties
20 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
21 Failure by a Designating Party to file such discovery dispute letter within the applicable 21- or
22 14-day period (set forth above) with the Court shall automatically waive the confidentiality
23 designation for each challenged designation. If, after submitting a joint letter brief, the Court
24 allows that a motion may be filed, any such motion must be accompanied by a competent
25 declaration affirming that the movant has complied with the meet and confer requirements
26 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the
27 discovery matter to a Magistrate Judge.
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In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court allows that a motion may be filed, any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph. The Court, in its discretion, may elect to refer the discovery matter to a Magistrate Judge.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a letter brief to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for

1 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
2 attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
4 to whom disclosure is reasonably necessary for this litigation and who have signed the
5 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
7 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
8 Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and Professional
11 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
12 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
17 bound by the court reporter and may not be disclosed to anyone except as permitted under this
18 Protective Order.

19 (g) the author or recipient of a document containing the information or a custodian or other
20 person who otherwise possessed or knew the information.

21 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
22 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise ordered by
23 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
25 "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
27 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
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1 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
2 attached hereto as Exhibit A;

3 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
4 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
5 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

6 (c) the Court and its personnel;

7 (d) court reporters and their staff, professional jury or trial consultants, and Professional
8 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (e) the author or recipient of a document containing the information or a custodian or other
11 person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
13 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
14 or Items to Experts.

15 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party,
16 a Party that seeks to disclose to an Expert any information or item that has been designated
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.2 (c) or
18 7.3(b) first must make a written request to the Designating Party that (1) sets forth the Expert’s full
19 name and the city and state of his or her residence and (2) describes the current and reasonably
20 foreseeable future primary job duties and responsibilities in sufficient detail to determine if he or she
21 is involved, or may become involved, in any competitive decision-making.

22 (a)(2) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party,
23 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
24 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
25 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.2(c) or 7.3(b) first must make a
26 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
28 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth

1 the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy
 2 of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each
 3 person or entity from whom the Expert has received compensation or funding for work in his or her
 4 areas of expertise or to whom the Expert has provided professional services, including in connection
 5 with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number
 6 of the case, filing date, and location of court) any litigation in connection with which the Expert has
 7 offered expert testimony, including through a declaration, report, or testimony at a deposition or trial,
 8 during the preceding five years.

9 (b) A Party that makes a request and provides the information specified in the preceding
 10 respective paragraphs may disclose the subject Protected Material to the Expert unless, within 14
 11 days of delivering the request, the Party receives a written objection from the Designating Party. Any
 12 such objection must set forth in detail the grounds on which it is based.

13 (c) A Party that receives a timely written objection must meet and confer with the
 14 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 15 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
 16 disclosure the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
 17 Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the Court to do
 18 so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons
 19 why disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
 20 would entail, and suggest any additional means that could be used to reduce that risk. In addition, any
 21 such motion must be accompanied by a competent declaration describing the parties' efforts to
 22 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
 23 and setting forth the reasons advanced by the Designating Party for its refusal to approve the
 24 disclosure.

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 26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 27 party, then the Expert should provide whatever information the Expert believes can be disclosed
 28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
 2 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 3 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

4 **8. PROSECUTION BAR**

5 Absent written consent from the Producing Party, any individual who receives access to
 6 "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -
 7 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
 8 applications relating to the patents asserted in this action and any patent or application claiming
 9 priority to or otherwise related to the patents asserted in this action, before any foreign or domestic
 10 agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes
 11 of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or
 12 otherwise affecting the scope or maintenance of patent claims.² To avoid any doubt, "prosecution" as
 13 used in this paragraph does not include representing a party challenging a patent before a domestic or
 14 foreign agency (including, but not limited to, a reissue protest, ex parte reexamination or inter partes
 15 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL -
 16 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - SOURCE CODE" information is
 17 first received by the affected individual and shall end two (2) years after final termination of this
 18 action.

19 **9. SOURCE CODE**

20 (a) To the extent production of source code becomes necessary in this case, a Producing Party
 21 may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or
 22 includes confidential, proprietary or trade secret source code.

23 (b) Protected Material designated as "HIGHLY CONFIDENTIAL - SOURCE CODE" shall
 24 be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES
 25 ONLY" information, including the Prosecution Bar set forth in Paragraph 8, and may be disclosed
 26 only to the individuals to whom "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"

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 28 ² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of
2 Designated House Counsel.

3 (c) Any source code produced in discovery shall be made available for inspection, in a format
4 allowing it to be reasonably reviewed and searched, during normal business hours or at other
5 mutually agreeable times, at an office of the Producing Party's counsel or another mutually agreed
6 upon location. The source code shall be made available for inspection on a secured computer in a
7 secured room without Internet access or network access to other computers, and the Receiving Party
8 shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable
9 media or recordable device. The Producing Party may visually monitor the activities of the
10 Receiving Party's representatives during any source code review, but only to ensure that there is no
11 unauthorized recording, copying, or transmission of the source code.

12 (d) The Receiving Party may request paper copies of limited portions of source code that are
13 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or
14 for deposition or trial, but shall not request paper copies for the purpose of reviewing the source code
15 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall
16 provide all such source code in paper form, including bates numbers and the label "HIGHLY
17 CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount of source
18 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set
19 forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving Party
20 is the "Designating Party" for purposes of dispute resolution.

21 (e) The Receiving Party shall maintain a record of any individual who has inspected any
22 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
23 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall
24 not create any electronic or other images of the paper copies and shall not convert any of the
25 information contained in the paper copies into any electronic format. The Receiving Party shall only
26 make additional paper copies if such additional copies are (1) necessary to prepare court filings,
27 pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition,
28 or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition

1 shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a
2 court reporter or any other unauthorized individual.

3 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
4 **OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
8 CODE,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
10 of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
12 other litigation that some or all of the material covered by the subpoena or order is subject to this
13 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and (c)
14 cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party
15 who’s Protected Material may be affected.³

16 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
17 court order shall not produce any information designated in this action as “CONFIDENTIAL,”
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
19 SOURCE CODE” before a determination by the Court from which the subpoena or order issued,
20 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear
21 the burden and expense of seeking protection in that court of its confidential material – and nothing in
22 these provisions should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

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27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 **11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
 2 **THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 4 action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 5 ONLY," or "HIGHLY CONFIDENTIAL - SOURCE CODE." Such information produced by Non-
 6 Parties in connection with this litigation is protected by the remedies and relief provided by this
 7 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 8 additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 10 Party's confidential information in its possession, and the Party is subject to an agreement with the
 11 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

12 1. Promptly notify in writing the Requesting Party and the Non-Party that some
 13 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

14 2. Promptly provide the Non-Party with a copy of the Protective Order in this
 15 litigation, the relevant discovery request(s), and a reasonably specific description of the information
 16 requested; and

17 3. Make the information requested available for inspection by the Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 19 days of receiving the notice and accompanying information, the Receiving Party may produce the
 20 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
 21 seeks a protective order, the Receiving Party shall not produce any information in its possession or
 22 control that is subject to the confidentiality agreement with the Non-Party before a determination by
 23 the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
 24 seeking protection in this court of its Protected Material.

25
 26
 27 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality
 28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
 interests in this court.

1 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
6 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **13. INADVERTENT PRODUCTION OF PRIVILEGE OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
13 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
14 modify whatever procedure may be established in an e-discovery order that provides for production
15 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or information covered by
17 the attorney-client privilege or work product protection, the parties may incorporate their agreement
18 in the stipulated protective order submitted to the Court.

19 **14. MISCELLANEOUS**

20 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the Court in the future.

22 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
25 Party waives any right to object on any ground to use in evidence of any of the material covered by
26 this Protective Order.

27 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
28 laws and regulations relating to the export of technical data contained in such Protected Material,

1 including the release of such technical data to foreign persons or nationals in the United States or
 2 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
 3 data, and the Receiving Party shall take measures necessary to ensure compliance.

4 14.4 Filing Protected Material. Without written permission from the Designating Party or a
 5 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 6 record in this action any Protected Material. A Party that seeks to file under seal any Protected
 7 Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may
 8 only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 9 Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue
 10 only upon a request establishing that the Protected Material at issue is privileged, protectable as a
 11 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
 12 Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
 13 the Court, then the Receiving Party may file the Protected Material in the public record pursuant to
 14 Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

15 **15. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 17 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
 18 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 19 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
 20 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 21 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
 22 the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that
 23 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 24 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
 25 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 26 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
 27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
 28 product, even if such materials contain Protected Material. Any such archival copies that contain or

1 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4
5 Dated: August 20, 2019

CARR FERRELL LLP

6
7 By /s/ Robert J. Yorio
8 Robert J. Yorio

9 Attorneys for Defendant and Counterclaimant
10 SENTIUS INTERNATIONAL, LLC

11 Dated: August 20, 2019

MARTON RIBERA SCHUMANN
& CHANG LLP

12
13 By /s/ Ryan J. Marton
14 Ryan J. Marton


15 Attorneys for Plaintiff and Counter-Defendants
16 ZOHO CORPORATION and
17 ZOHO CORPORATION PVT., LTD.

18 **ORDER**

19 **PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.**

20
21 Dated: August 22, 2019

By:


22 Honorable Yvonne Gonzalez Rogers
23 Judge of the United States District Court
24
25
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZOHO CORPORATION,

Plaintiff,

v.

SENTIUS INTERNATIONAL, LLC

Defendant.

CASE NO. 4:19-cv-00001-YGR

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND -
EXHIBIT A**

SENTIUS INTERNATIONAL, LLC,

Counterclaimant,

v.

ZOHO CORPORATION and ZOHO
CORPORATION PVT., LTD.

Counter-Defendants.

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Northern District of California on _____ [date] in the
case of *Zoho Corporation v. Sentius International, LLC.*, Case No. 4:19-cv-00001-YGR. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

1 I further agree to submit to the jurisdiction of the United States District Court for the
2 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
3 Order, even if such enforcement proceedings occur after termination of this action.

4 I hereby appoint _____ [print or type full name] of
5 _____ [print or type full address and telephone number] as
6 my California agent for service of process in connection with this action or any proceedings related
7 to enforcement of this Stipulated Protective Order.
8
9

10 Date: _____

11 City and State where sworn and signed: _____

12 Printed name: _____
13 [printed name]

14 Signature: _____
15 [signature]
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